Vol 31

MAY 22 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1031 93

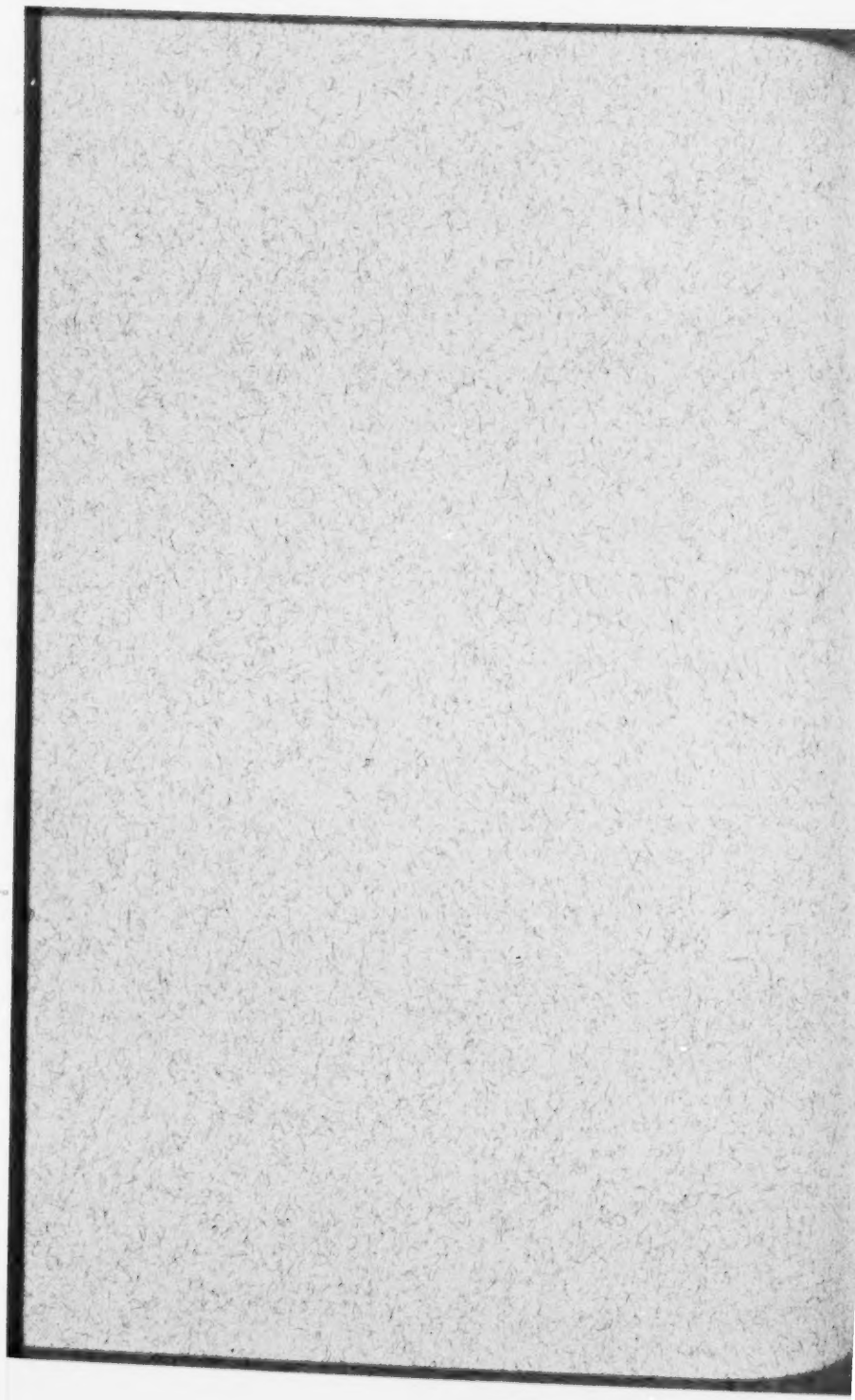
MARGARET B. CARPENTER AND L. E. CARPENTER,
ALSO KNOWN AS LEROY E. CARPENTER,
Petitioners,

vs.

ARCHIBALD J. HAMILTON.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

A. L. WIRIN,
Counsel for Petitioners.



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ARCHIBALD J. HAMILTON.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Your petitioners Margaret B. Carpenter and L. E. Carpenter, also known as Leroy E. Carpenter, respectfully allege:

A.

Summary Statement of the Matter Involved.

The petitioners are defendants in a foreclosure proceeding brought in the Superior Court of Los Angeles County to foreclose a certain trust deed with respect to certain real property purchased by said defendants from the plaintiff, Archibald J. Hamilton (R. 2). The purchase price for

the said property was $12,500.00 (R. 12). Defendants paid $5,000.00 on account of said purchase price and gave the trust deed in question to secure the balance of $7,500.00 (R. 3). The property in question is occupied by petitioners as their home (R. 13).

Prior to the commencement of said foreclosure suit, petitioners had instituted an action in said court against said Archibald J. Hamilton to recover damages for fraudulent representations alleged to have been made to them by said Hamilton on the sale to petitioners of said property (R. 29). The trial of said action was by jury and after a verdict was rendered for petitioners. Thereafter a new trial was granted to defendant Hamilton. Hamilton then moved for judgment notwithstanding the verdict, which motion was denied. Hamilton then appealed from the order denying his said motion for judgment notwithstanding the verdict and from the judgment on the verdict (See Remittitur R. 36). An appeal from the judgment thereon was taken by said Hamilton to the District Court of Appeals for the Second Appellate Dist. of California upon which appeal, judgment for petitioners was reversed and the cause remanded with directions to the said Superior Court to enter judgment in favor of said Hamilton (R. 36), which judgment was accordingly entered (R. 37).

In the foreclosure proceeding petitioners interposed an answer to plaintiff Hamilton's complaint setting out as an affirmative defense therein the said fraudulent representations alleged in the former fraud action to have been made by said Hamilton, together with additional such representations so made (R. 10 *et seq.*).

On the trial of said foreclosure proceeding the court admitted into evidence the judgment roll in the previous action for fraud (R. 27) and denied petitioners proffer of proof as to the matters set forth in their said affirmative

defense (R. 27, 28). Said denial was upon the ground that the matters sought to be introduced in evidence had been previously adjudicated in the former action for fraud (R. 28).

Judgment of foreclosure was thereupon entered against petitioners and in favor of said Hamilton (R. 23). An appeal from said judgment was taken by petitioners to the Supreme Court of California (R. 46 *et seq.*) and the said court affirmed said judgment on the ground that the question of Hamilton's fraud had been previously adjudicated in the former action (R. 46 *et seq.*).

The constitutional question raised by this petition for a writ of certiorari is whether the petitioners have been deprived of their property without due process of law as guaranteed by the 14th Amendment to the Constitution of the United States.

More precisely the question is whether the refusal of the trial court (which refusal was affirmed by the Supreme Court of California) to allow the introduction of evidence, proffered by the petitioners, to the effect that the respondent (plaintiff below) was guilty of "unclean hands", constitutes the denial, in effect, of a hearing, and hence denied due process.

It is a novel question never heretofore determined by this court.

1. Statutory Provisions sustaining Jurisdiction. Jurisdiction of this Court is invoked under Judicial Code, sec. 237b, as amended by Act of February 13, 1925, 43 Statutes 937.

2. The judgment of the Supreme Court of California, sought to be reviewed herein, is dated February 5, 1940; a petition for rehearing, duly filed with the Court below, was denied on March 5, 1940.

3. The Supreme Court of California is the court of last resort in California.

4. The judgment sought to be reviewed is a final judgment.

5. The action is one in equity for foreclosure of a trust deed and petitioners had interposed an affirmative defense to such action which in effect invoked the equitable doctrine of "unclean hands" (R. 10 *et seq.*). By the rulings of the court, petitioners were precluded from asserting this doctrine as a defense of said action and have thereby been deprived of a substantial right to protect their property against an inequitable foreclosure. Such action on the part of the court amounts to a denial of due process under the 14th Amendment to the Constitution of the United States. The cases which the petitioners believe sustain the jurisdiction of this Court are *Carolene Products Co.* v. *McLaughlin,* 365 Ill. 62, 5 N. E. (2d) 447; *B. & O. R. R. Co.* v. *U. S.,* 298 U. S. 349, 364 *et seq.; Palko* v. *State of Connecticut,* 302 U. S. 219; 58 S. Ct. 149.

B.

Ground on Which Contended Questions Involved Are Substantial.

The petitioners, as defendants in the proceedings in said Superior Court were in effect denied a hearing because deprived of the right to assert and prove a substantive and substantial defense, namely, that the plaintiff was guilty of unclean hands; the right to introduce evidence supporting such a defense is a fundamental right inherent in due process.[1]

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[1] *Carolene Products Co.* v. *McLaughlin,* 365 Ill. 62, 5 N. E. (2d) 447; See *Ga. R. & Elec. Co.* v. *Decatur,* 295 U. S. 165, 171, 79 L. Ed. 1365, 1370, 55 S. Ct. 701; *B. & O. R. Co.* v. *U. S.,* 298 U. S. 349, 364, *et seq.,* 80 L. Ed. 1209, 56 S. Ct. 797.

That the question of the right of petitioners, the defendants, to present evidence of unconscionable conduct on part of plaintiff in connection with the transaction in issue was raised in the trial court by proffer of proof as to the defense of plaintiff's (R. 27 *et seq.*) "unclean hands"; that it was brought to the Supreme Court of California upon an appeal because of the trial court's having sustained the objection to said proffer of proof (R. 46 *et seq.*).

The trial court sustained the objection to defendants' proffer of proof as aforesaid on the ground that the matter had been once adjudicated (R. 28). The Supreme Court in its decision on appeal affirmed the ruling of the trial court by holding that the question of fraud had been adjudicated in the former action between the parties (Decision of California Supreme Court, R. 46 *et seq.*).

Reasons Relied On for Allowance of Writ.

Petitioners contend that in the court of first instance the refusal of said court to hear evidence as to defendants' defense of "unclean hands" denied to defendants a hearing before said court and a consequent deprivation of property without due process of law.

The doctrine of "unclean hands" is a fundamental concept of equity jurisprudence of ancient origin, and broad application.[2] It is the expression of the elementary and fundamental conception of equity jurisprudence.[3] To abrogate the doctrine is to offend Federal due process.

Defendants were therefore deprived of a substantial right in being precluded from offering evidence in support of their defense of plaintiff's "unclean hands" in connection with the matter at issue.

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[2] *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 78 L. Ed. 293, 54 S. Ct. 146; *Horton* v. *Little et al.*, 188 Ala. 640, 65 So. 951.

[3] *American Association* v. *Innis*, 109 N. Y. 595, 60 S. W. 388, 22 Ky. L. 1196.

The question of plaintiff's right to offer this evidence in their defense was brought to the bar of the courts of California.

Petitioner contends that the question of plaintiff's "unclean hands" in connection with the matter in issue in the foreclosure suit is separate and distinct from the question of fraud.

It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with controversy to which he is a party, will repel him from the forum whose very foundation is good conscience. (1 Pomeroy's Equity Jurisprudence, Fourth Edition, 761.) Aside from the apparent basis of the ruling of the appellate court in the fraud action, namely, that your petitioners had the opportunity to discover Hamilton's fraud, the matter of Hamilton's "unclean hands" was not in issue in the fraud case and was therefore never decided in that case (R. 38)—(Decision of District Court of Appeal). The action for fraud was a legal action—the proceeding in foreclosure an equitable one. The matter of a party's "unclean hands" is within the exclusive jurisdiction of equity. There were no equitable issues in the fraud action.[4]

The action of the trial court in denying petitioners the right to present evidence in support of their defense as to plaintiff's "unclean hands" constituted a violation of the guaranty of due process.[5]

WHEREFORE, your petitioners respectfully pray that this Court issue a writ of certiorari to review the judgment of

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[4] See *Harns* v. *Stern*, 229 Fed. 42, 145 C. C. A. 2; *Hills* v. *Sherwood*, 48 Cal. 386; *People's Pure Ice Co.* v. *Trumbull*, 70 Fed. 166, 17 C. C. A. 43.

[5] *Carolene Products Co.* v. *McLaughlin*, *supra*.

the Supreme Court of California affirming the decree of foreclosure of the Superior Court of said State in and for the County of Los Angeles directed against the real property of your petitioners.

Respectfully submitted,

A. L. WIRIN,
Attorney for Petitioners.